cluded coal from her list of contraband, as did Spain in 1898. On the other hand England has consistently since the Crimean war classed coal as relative contraband, a rule to which the United States adhered in her war with Spain, and Japan in the war with Russia. Contrary to all established practice Russia took the novel position, by the imperial order of February 4, 1903, of holding coal to be absolute contraband irrespective of its destination. When the subject of contraband came up before the second Hague conference it was found impossible to reach an agreement as to what should be included in conditional contraband, and the question was left to be decided by the London naval conference. In the declaration of February 26, 1909, article 24 includes coal in the list of conditional contraband.

M. Pilidi has given us a very careful piece of work, and if his conclusions seem at times a defense of French policies, he admits very frankly that an accord can hardly be expected where the interests of the powers are so diverse.

C. G. FENWICK.

Roman Law in Mediæval Europe. By PAUL VINOGRADOFF. (London and New York: Harper & Brothers. 1909. Pp. ix, 135.)

This admirable little volume is in every respect worthy of its author's reputation. Based upon lectures "delivered in the spring of 1909 as an advanced historical course on the invitation of the University of London," it exhibits in compact and readable form the results of a surprising amount of research in a field which has been too long neglected by English and American scholars. The materials for the work are drawn principally from the mediæval law writings and the German commentaries thereon. Owing to certain historical and special reasons, the general subject of the present work has been exhaustively studied in Germany; but so little attention have English speaking scholars devoted to it that, as Prof. Vinogradoff points out, there is in English no other account of the mediæval life of the Roman law similar in scope to the one here presented.

The work is in five chapters, or "lectures." The first begins at the period of the Western Empire's last struggles with the barbarians—a period characterized by the romanization of the provinces and the barbarization of Rome. The presence within its borders of vast numbers

of aliens caused the empire to recognize the legal customs of the various tribes, thus planting the germ of the later principle that a man should be held primarily responsible to his own personal law. A second result was the debasement of the Roman law in the provinces, as evidenced by a comparison of Justinian's code with the Breviarium Alaricianum, and especially with the Lex Romana Curiensis, the two principal statements of the barbarized Roman law prepared in the fifth and sixth centuries. On the other hand, even after the barbarian invasions, the Roman inhabitants were still governed in large part by their own law; and in various ways the influence of the Roman law permeated the proper domain of the barbarian laws as well. Moreover, our author adduces reasons for believing that there was a constant, though scanty, "stream of jurisprudence," in the sense of theoretical study, running through the period, which took the form principally of abstracts and glosses.

Lecture Two treats of the revival of jurisprudence—the spontaneous awakening of theory and learning in the field of law—which took place about the 11th century. At least four important centres of legal learning should be noticed: Provence, the cities of Lombardy (especially Pavia), Ravenna, and the famous school at Bologna which became the leading university of the middle ages. The method of legal study at this time was scholastic or dialectic. Great efforts were expended upon the restoration and literal interpretation (through the medium of glosses) of the text of the *corpus juris*. But these processes were subordinated to dialectical analyses of texts, whereby these were shown to support one another or to contain gaps and contradictions. In this particular the school at Bologna attained a high excellence. So the scholastic theorists, although they "framed their definitions and distinctions in too rigid a manner, yet they helped materially to disentangle the general conceptions of law from the chaotic uncertainty of a blind struggle for existence."

In France (Lecture Three) there was a revival of civilization and learning contemporaneous with that taking place in Italy. The scholastic movement was nowhere more powerful than in the university of Paris. The most interesting of the many products of French legal studies during the period of the formation of the school at Bologna is the recently discovered "Lo Codi" (about 1149), a summary of Justinian's code compiled for the use of the judges of Provence and composed in that language—the first compilation of Roman law in a vernacular tongue. In Provence, of course, the Roman law was recognized as the principal legal authority. But its influence permeated as well the regions governed

by customary law derived largely from Germanic traditions. This resulted from the increasing knowledge of the Roman law, and the consequent struggle for existence between the rules and institutions of the two systems. The reign of St. Louis was very conspicuous for the progress of legal institutions, attributable to the growth of royal authority and the diligent study of the law; and in the productions of this period the influence of the Roman law is easily traceable. The extent and manner of the reception of the Roman law in the regions of the native customary law is well shown in the "Coutoume de Beauvaisis," compiled by Philippe de Remi, Sire de Beaumanoir, between 1279 and 1283, of which the author gives an interesting review.

Turning now to England (Lecture Four) we find that the civil law of Rome exercised a potent influence on the formation of the common law during the critical 12th and 13th centuries. Though never a constituent element of the latter system, and though opposed in its spread by church and state, its teaching in the English universities persisted, and exercised a considerable, though indirect influence upon the practice of the common law. The most important English contribution to Romanesque jurisprudence is contained in the work of Bracton. Though he modeled his work in part after that of the great Bolognese doctor Azo, Bracton's aim and method were quite different. Azo was distinctively an expositor of the Roman law, which he did not attempt to modify. Bracton, however, sought to build up institutes for the English law of his time with the help of Roman materials. His introduction, drawn chiefly from Azo, was undoubtedly intended to "strengthen native legal doctrines by the infusion of legal conceptions of a high order drawn from the fountain head of civilized and scientific laws." The author proceeds to fortify this view by numerous citations showing certain differences between the teachings of Azo and of Bracton, the manner in which the latter adopted and modified Roman ideas to suit local requirements, and particulars in which Roman conceptions have left distinct traces upon the English law. "The only real test of its (the Roman influence's) character," our author concludes, "is afforded by the development of juridical ideas, and in this respect the initial influence of Roman teaching on English doctrines will be found considerable."

The primary reason for the "reception" of the Roman law in Germany in the 15th century (Lecture Five) is found in the excessive particularism characterizing German political and legal institutions of the period. The division of sovereignty among so many units, the varied laws of social status, the division between lay and ecclesiastical courts, the prac-

tice of settling cases by unwritten law "found" by the assessor's—all these contributed to the confusion and lack of unity characterizing the German law of the middle ages. Several interesting attempts were made to remedy this condition by expedients of native origin, such as appeals to superior courts, and various authoritative and popular treatises upon customary law and procedure. These works were strongly impregnated by the influence of Roman law, attributable largely to the growing knowledge of that system. The principal medium of the application of Roman law in the earlier stages of the reception took the form of juridical consultations and awards, whereby administrative and legal problems were referred to learned jurists, especially to the doctors of law in the universities, who applied Roman doctrines in the settlement of the cases. The results of this reception, occasioned by the reasons above mentioned, were reaped principally in the 16th century. Courts administering German law were overwhelmed by tribunals following Roman doctrines, primarily in consequence of the organization (in 1495) of the "Reichskammergericht," which deliberately adopted the Roman law as the common law of the empire and threw its weight on the side of the reception— an example followed by the high courts of the various principalities. Although mainly a movement of the upper classes, the reception encountered less opposition from the lower orders of the people than might have been expected. The fundamental incongruity of the attempt to amalgamate the two systems of law was not perceived until much later, when the native law was resuscitated from oblivion and contempt.

The study closes with the following apt generalization: "Altogether, the history of the Roman law in the middle ages testifies to the vigor and organizing power of ideas in the midst of shifting surroundings."

J. Wallace Bryan.